

FILED

MAY 08 2015

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DAVID MICHAEL ESLICK,

Petitioner,

vs.

LEROY KIRKEGARD; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

Cause No. CV 12-107-M-DLC

ORDER DISMISSING PETITION
AND DENYING CERTIFICATE OF
APPEALABILITY

This case comes before the Court on David Michael Eslick's letter to the Clerk of Court and attached documents requesting a "writ of error." Eslick, a state prisoner proceeding pro se, contends that the Judge who presided over proceedings on his original conviction should have recused himself from revocation proceedings against Eslick.

Although some of the documents appear to be intended for other courts, Eslick mailed all of his documents to this Court. As this Court is not a mail forwarding service, it will not forward the documents on Eslick's behalf.

Regardless, all of Eslick's documents lack merit. His claim has repeatedly been rejected by this Court as frivolous. Moreover, the only jurisdictional basis on

which the Court could entertain any challenge by Eslick to the validity of his custody under a state judgment is 28 U.S.C. § 2254. *Mardesich v. Cate*, 668 F.3d 1164, 1174 (9th Cir. 2012). Eslick has already litigated to completion a petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging the revocation of his suspended sentence for burglary. *See* Pet. (Doc. 1) at 2-4. Therefore, unless and until Eslick obtains leave from the Ninth Circuit Court of Appeals to file a successive habeas petition, *see* 28 U.S.C. § 2244(b), this Court has no jurisdiction to hear a petition from him, *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (*per curiam*).

A certificate of appealability is denied because there is no doubt this Court lacks jurisdiction. Transfer to the Court of Appeals is not in the interest of justice, *see* 28 U.S.C. § 1631, because Eslick's claim is frivolous.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Eslick's documents seeking a "writ of error" (Docs. 16, 16-1) are DISMISSED for lack of jurisdiction as in substance an unauthorized second or successive petition under 28 U.S.C. § 2254.

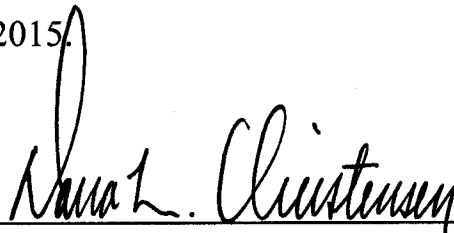
2. The Clerk of Court shall enter, by separate document, a judgment of dismissal.

3. A certificate of appealability is DENIED.

4. This action is CLOSED. Other than a notice of appeal, no action will be

taken on further submissions under this cause number.

DATED this 8th day of May, 2015.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court